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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963

No. 845

378 REALTY CORP., 110TH ST. HOTEL CORP., TIMNAT ASSOCIATES, INC., PETER STUYVESANT 86TH CORP., SCHUYLER ASSOCIATES, VICTOR ASSOCIATES, INC., and ENDICOTT APARTMENT HOTEL, suing on behalf of themselves and all other owners, operators and lessees of hotels similarly situated in the City of New York,

Appellants,

v.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

## MOTION TO DISMISS OR AFFIRM

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NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

## MOTION TO DISMISS OR AFFIRM

The New York City Rent and Rehabilitation Administration moves, pursuant to Rule 16 of the Revised Rules of this Court, (a) to dismiss the appeal herein, taken from the final judgment of the New York Court of Appeals, on the ground that no substantial federal question of any kind has been raised, or (b) in the alternative, that the judgment appealed from be affirmed.

## The Lack of Federal Substance in the Issues Presented

This appeal challenges provisions in the City Rent and Rehabilitation Act, copied verbatim—when rent control was transferred in 1962 to the City by the State—from provisions of the State Rent Act as amended in 1959 and 1961. Those provisions were designed to cope with abuse and evasion of the rent control law by landlords of properties which were in fact rent controlled, but which had masqueraded under self-styled, self-assumed status of "decontrolled hotels" in order to collect decontrolled rents.

More specifically, the Legislature aimed at correcting the following categories of abuse:

(1) Properties which had always been rent controlled—"pseudo" hotels, "purported" hotels, "phoney" hotels—which never actually were anything but controlled housing within the meaning of the rent law, but which were self-styled as "decontrolled hotels" or "exempt hotels" to escape rent control. For the most part, these "pseudo" hotels (many, old law tenement houses) were controlled apartment buildings in every sense, under federal and state rent control, whose individual apartments had been converted to single room occupancy. It was primarily this type of building which was invoived in repeated reports by the New York City Welfare Department that it was forced to pay exorbitant rents, for recipients of public welfare, for a dilapidated slum room occupied by an entire family. These owners represented the establishments as "decontrolled hotels" and thereby claimed the right to freedom from all controls. The fact was that these properties not only completely lacked the indicia and services provided by true hotels, but had never been hotels on the determinative statutory date, March 1, 1950 (see *infra* p. 6). Some of these establishments even fortified themselves with "opinion" letters of decontrol, obtained by misstatement of material facts to the then rent agency.

(2) Properties which were originally not controlled—these really had been exempt hotels—which had decayed, by ceasing their base date operation as hotels or eliminating their known base date services, and had deteriorated into rooming houses or worse, in any event controlled housing.

To meet the problem of evasion of rent controls posed by these two groups (a problem primarily affecting the very poorest tenants in New York City, those least able to protect themselves), the State Legislature, and subsequently the New York City Council, enacted legislation expressly spelling out the power of the rent agency (a) to review the control status of a particular establishment under the rent law on the admitted statutory base date and (b) to make a factual determination wiping out any masquerade of decontrol. Since these provisions have been in the State and City laws for the past four years, they have been the subject of much administrative action, first by the State Rent Administrator and then by the City Rent and Rehabilitation Administration. Moreover, they have repeatedly been reviewed by the courts and upheld. The instant appeal, attacking not any one of these rulings but the right of the Legislature to enact legislation dealing with this evil, seems to us barred by the most elementary principles of constitutional law.

Rent control itself, as an exercise of the federal war power or the state police power, has of course long since been held to be constitutional, and is not here challenged. *Bowles* v. *Willingham*, 321 U. S. 503 (1944). *Teeval Co., Inc.* v. *Stern*, 301 N. Y. 346 (1950), certiorari denied 340 U. S. 876, 71 S. Ct. 122; *I.L.F.Y. Co.* v. *Temp. St. Hous. Rent Comm.*, 10 N. Y. 2d 263 (1961), 219 N.Y.S. 2d 249, appeal dismissed 369 U. S. 795 (1963), 782 S. Ct. 1155.

This appeal presents no substantial federal question of any kind. Indeed, the attacked provisions fall completely within the special competence of the Legislature to estab-

lish statutory procedures reasonably adapted to a recognized and undisputed public need. This Court has repeatedly dismissed or denied certiorari in substantially identical circumstances. This appeal, too, should be dismissed or, in the alternative, the judgment below should be affirmed. *Four Maple Drive Realty Corp.* v. *Abrams*, 2 N. Y. 2d 837, 355 U. S. 14 (1957), 78 S. Ct. 22; *Patterson* v. *Stanolind*, 305 U. S. 376, 379 (1938); *Levering and Garrigues Co.* v. *Morrin*, 289 U. S. 103, 105, 106 (1933); *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 577 (1945), 326 U. S. 697, 66 S. Ct. 493.

We note that the Jurisdictional Statement as well as the record, prepared by appellants in this declaratory judgment action, contain self-serving claims and extracts of parts of incomplete administrative proceedings which are pending determination in the City rent agency. These materials are not properly here, since this is not an appeal to review the facts in such incomplete, pending administrative proceedings. Indeed appellants fully admitted below (fol. 180): "It is not the intention here—as indeed it could not properly be—to collaterally consider the actions of the defendants in regard to the premises."

## Counter-Statement of "Questions Presented"

The only question presented by this appeal is whether the challenged amendments, enacted to aid in enforcement of the rent control law and to correct abuse thereof, bear a reasonable relation to the exercise of a concededly lawful purpose and to the evils which the Legislature sought to combat.

## The Statute Involved

All pre-1947 housing accommodations (including hotels) are controlled, and are set forth in the rent statute. The statute also lists accommodations which are not controlled,

including certain hotel accommodations. It was the latter provision under which the abuses referred to hereinabove arose and which was accordingly amended by the State in 1959 and 1961 to clarify the situation [New York State Emergency Housing Rent Control Law, ch. 695, Laws 1959, sec. 2, subd. 2(b), ch. 337, Laws 1961, sec. 2, subd. 2(b)], in the language subsequently incorporated verbatim into the New York City Rent and Rehabilitation Act [New York City Administrative Code, sec. Y51-3.0, subd. (e)(2)(e)]. That provision is the one now before this Court, and appellants specifically challenge only the italicized portions of the following statutory definition:

> "The term 'housing accommodation' shall not include:
>
> * * *
>
> (e) *Notwithstanding any previous order, finding, opinion or determination of the commission*, housing accommodations in any establishment which on March 1, 1950, was *and still is* commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, provided, however, that the term hotel shall not include any establishment which is commonly regarded in the community as a rooming house; *nor shall it include any establishment not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the federal act*, irrespective of whether such establishment provides either some services customarily provided by hotels, or is represented to be a hotel, or both; * * *"

## Statutory Background

All of rent control, since its inception by the federal government in November, 1943, is necessarily anchored to

a statutory base date, which is the gauge for determining a property's rent control status, amount of maximum rent, and essential services. Appellants admit the controlling base date for evaluating status of these establishments is *March* 1, 1950 (two months before the end of federal rent control). State rent control went into effect on *May* 1, 1950, and continued rent control of whatever had been subject to federal rent control on the preceding March 1, 1950. (In like fashion, the City rent law, effective May 1, 1962, continued rent control of all properties which were controlled by the State rent act on the preceding April 30, 1962, and no decontrol windfall—of the kind here demanded—resulted from that transfer.) The highest court of New York State has ruled that federal classifications, determinations, and federal rent agency orders of all kinds, in effect on March 1, 1950, were binding on the new State rent agency, as a matter of law, when the State rent law went into effect on May 1, 1950. *Proche* v. *McGoldrick*, 307 N. Y. 760 (1954).

The hotel provision here challenged (quoted *supra*, p. 5), decontrolling only those establishments which on March 1, 1950—two months before the end of federal rent control—were hotels and provided specified hotel services, ties in directly with this general statutory scheme. Thus, unless an establishment had been decontrolled by the federal government prior to March 1, 1950, neither its subsequent masquerade as decontrolled, its present physical appearance, nor rendition today of hotel services can fill that statutory jurisdictional omission. It is their refusal to recognize that crucial fact that brings appellants to this Court.

The history of the Federal and State (and now City) rent acts reveals a continuity and a parallelism of purpose and procedure in the treatment of hotels. As a matter of fact, the definition of "hotel" in the new State rent law was the same as the definition in the pre-existing Federal

statute. New York State, in enacting its rent control law, was not creating any new pattern of rent control as regards types of accommodations. It was merely taking over from the Federal government those accommodations which had theretofore been subject to rent control under Federal law—precisely as New York City now controls what was subject to the State rent law. In other words, insofar as hotels are concerned, the Legislature did not attempt any new definition or formula of what constitutes a hotel.

In order to show that the State rent law continued control over those accommodations which were subject to Federal rent control on the admitted base date of March 1, 1950, and that this appeal is nothing more than an attempt to perpetuate a post-base date masquerade of decontrol, it is necessary to review, briefly, Federal and State rent control as regards this class of accommodations even though it regrettably adds to the length of this motion:

**Federal Rent Control—1943**

Control of rents of hotels in New York City was initiated by the Federal government on November 1, 1943. Although the Office of Price Administration issued separate Regulations (New York Area) for rooming houses and hotels, as distinguished from housing generally, nevertheless the rents of all housing accommodations and of all hotels (transient and residential) were controlled.

The Housing and Rent Act of 1947 (Public Law No. 129, 80th Congress, First Session, Sec. 202(c)) provided for decontrol of the rents of almost all hotel accommodations, but kept under control those not providing specified customary hotel services. (In July, 1947, New York City passed a local law which protected permanent tenants decontrolled under the Federal law from rent increases, i.e., tenants in occupancy at least 90 days prior to July, 1947.)

**Federal Rent Control—1949**

*Effective April 1, 1949*, the Federal government (Housing and Rent Act of 1949, Public Law No. 31, 81st Congress, First Session) *recontrolled* hotel accommodations in New York City by repealing the foregoing 1947 exemption (sec. 202-c) and *by substituting in its stead* (sec. 202(c)(1)(B)) *this limited exemption from rent control:* "The term 'controlled housing accommodations' means housing accommodations in any defense rental area, *except that it does not include:*" (a) rooms in transient hotels, i.e., 75% or more transient occupancy on March 1, 1949 (or if the hotel was not such a transient hotel, hotel rooms rented for transient occupancy-daily basis to a tenant who lived there less than 90 days on March 1, 1949), and (b) a hotel was defined as an establishment which on June 30, 1947 was commonly known as a hotel in the community and was occupied by an appreciable number of persons who were provided with customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

Thus, after the Housing and Rent Act of 1949, only transient hotel accommodations which met the above requirements, remained decontrolled. On the other hand, apartment buildings, rooming houses, residence clubs (consistently defined—as at present—by the Federal regulations as rooming houses) and other establishments which did not meet the foregoing hotel definition (or, like many of these establishments, had affirmatively been denied decontrol)—*all remained subject to Federal rent control.*

**State Rent Control—1950**

In recommending enactment of the State Rent Law, Governor Dewey stated (1950, Legis. Doc. No. 39):

> "Permanent residential accommodations in hotels were decontrolled in 1947 and re-controlled in New York City by Federal action in 1949 * * *

"Accordingly, I recommend * * * that legislation be enacted * * * providing for State control of residential rents *in all areas now subject to Federal or City control.*" (Italics ours)

Section 14, subd. 1 of the State Rent Law (Ch. 250, L. 1950) clearly expressed this purpose:

"Sec. 14. Intent. 1. *It is the intention of this act to subject to control only those housing accommodations, as that term is defined herein, which were subject to rent control and for which a maximum rent was in effect on March 1, 1950, pursuant to federal or local laws*, and in the discretion of the commission those housing accommodations for which a maximum rent was thereafter established, pursuant to the provisions of Sec. 4 hereof." (Italics ours)

The Legislature re-enacted the foregoing Sec. 14, without change, every two years throughout State rent control (Cf. ch. 337, L. 1961, Sec. 14). Appellants admit the said March 1, 1950 base date is applicable to the following definitions which, like the preceding federal law, provided that only the following hotel accommodations were not controlled (ch. 250, L. 1950, Sec. 2, subd. 2(b)):

"transient housing accommodations in any establishment commonly regarding as a hotel in the community in which it is located: the term 'transient housing accommodations' shall mean accommodations rented on a daily basis to a tenant who is provided customarily with hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service and who had not on March 1, 1950 continuously resided in the hotel for 90 days or more."

After a year of operation, the statutory exemption was enlarged to provide that the following only was not controlled (Ch. 443, Laws 1951, Sec. 2, subd. 2(b), 1951 McKinney's Session Laws of New York, p. 562):

> "Housing accommodations in any establishment commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; provided, however, that it shall include housing accommodations in hotels within * * * the cities of * * * New York which have been and still are occupied by a tenant who has resided in such hotel continuously since December 2, 1949, so long as such tenant occupies the same;"

Section 3(10) of the State Rent and Eviction Regulations, effective May 1, 1950, which mirrored the said March 1, 1950 test date for hotels, was validated and confirmed by the State rent law (ch. 443, L. 1951, sec. 17, subd. 2, 1951 McKinney's Session Laws of New York, p. 579).

**State Rent Control—1959**

The challenged 1959 amendment (now copied into the City Rent Law) was recommended by Governor Rockefeller in a special message to the Legislature on February 9, 1959 (1959 McKinney's Session Laws of New York, p. 1703), where he stated:

> "The State Rent Administrator will present to the Legislature at the public hearings to be held shortly by the Temporary State Commission on Rents and Rental Conditions * * * recommendations to strengthen the present law. These recommendations will include control of certain rooming houses which have evaded

rent regulation * * * I urge the Legislature to adopt these recommended changes in the law."

In making its recommendations to the Legislature, the New York State Commission to Study Rents and Rental Conditions stated in pertinent part (1959 McKinney's Session Laws of New York, p. 1835):

"Recommended Amendments to the Residential Rent Control Law

"Evidence before the Commission prompts it to recommend to the Legislature for enactment * * *

"Recontrol of Pseudo 'Hotels': Will void the opinions of the Rent Commission decontrolling accommodations in certain establishments, which, to escape rent control, began (usually after the year 1950) to represent themselves as 'hotels'. Although these establishments frequently furnish some services customarily provided by true hotels, they were commonly regarded in the community as rooming houses or residence clubs. Specific recontrol of such accommodations is authorized 'notwithstanding any previous order, finding, opinion or determination', that such accommodations were hotels.

"In order to qualify as a hotel for decontrol purposes, the amendment provides that the establishment must have been commonly regarded as a hotel on March 1, 1950 in the community where it is located and still is so regarded.

"This amendment will also vest in the Commission the additional power to recontrol former establishments that qualified as hotels which are currently not providing services customarily provided in hotels and have degenerated into rooming houses or worse. The restrictive definition of the term 'hotel' will make it unnecessary for the Commission to review any prior determination."

In other words, once the abuse of the "pseudo" hotels, with or without "opinion" letters, and of the "decayed" hotels, had become sufficiently widespread to be recognized, it was not difficult to detect or to remedy, and these clarificatory amendments, which are challenged here, were enacted:

1. In 1959: to remedy a masquerade as a hotel after the admitted statutory base date of March 1, 1950 whereby controlled rooming houses, residence clubs and other establishments had submitted misstatements of material facts to the then State rent agency and had obtained thereby "opinion letters" of decontrol, the new law stated the obvious, namely, that the rent agency would make a factual determination of what the establishment was under the rent law on the statutory base date and could revoke any such "opinions" of decontrol where misstatement of material facts had been practiced on it, "notwithstanding any previous order, finding, opinion or determination of the commission" (ch. 695, Laws of 1959, sec. 2, subd. 2(b), 1959 McKinney's Session Laws of New York, p. 936).

2. In 1959: to remedy the problem of the post-base date masquerade as a "hotel", and to remedy the problem of the "decayed" hotel, the rent law definition was amplified to make plain the obvious requirement that the establishment "was and still is" a hotel (ch. 695, Laws of 1959, sec. 2, subd. 2(b), 1959 McKinney's Session Laws of New York, p. 936).

3. In 1961: further to remedy a masquerade as a hotel after the 1950 statutory base date, by stating the now well settled principle of law, for the benefit of affected parties, that whatever an establishment was under the (Federal) rent law on the base date of March 1, 1950 was binding on the State rent agency, as well as on such establishments, i.e., that the term hotel does not include "any estab-

lishment not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the federal act" (ch. 337, Laws of 1961, sec. 2, subd. 2(b), 1961 McKinney's Session Laws of New York, p. 489).

**City Rent Law—1962**

Under the Home Rule provisions of the New York Constitution, jurisdiction over rent control in New York City (cities with a population over one million) was transferred from State to City administration on May 1, 1962, with specific power in the City to copy or to change, in whole or in part, the predecessor State rent law pattern (ch. 21, Laws 1962, Sec. 12). *I.L.F.Y. Co.* v. *City Rent and Rehabilitation Administration*, 11 N. Y. 2d 480 (1962), 230 N.Y.S. 2d 986; *Hartley Holding Co.* v. *City Rent and Rehabilitation Administration*, —— N. Y. 2d —— Dec., 1963).

As the challenged hotel provisions had only recently been the subject of extended review and amendment, they were copied verbatim into the City rent law. The Report of the New York City Council's Committee on General Welfare, which introduced the rent control bill, stated (p. 4) that where no change is needed, the language of the predecessor State rent law was being retained in order to provide "a large body of judicial and administrative precedent, extremely useful for interpreting and carrying forward the essential concepts of rent control." This Report also stated (p. 6):

> "The hard core of the slum evil exists in the City's rooming house and single room occupancy accommodations. As a class, these accommodations harbor the most exploited of our tenants who are prey to every form of housing racket. In some cases, rooming house rents have attained levels out of proportion to the space and services provided * * *"

## ARGUMENT

**Since the challenged amendments patently constitute a reasonable exercise of the police power, this appeal presents no substantial federal question.**

Appellants do not dispute the continuance of the housing emergency, which is the predicate for these housing rent control laws. *Bowles* v. *Willingham*, *supra*, 321 U. S. 503, 517 (1944); *Teeval Co.* v. *Stern*, *supra*, 301 N. Y. 346, 362, certiorari denied 340 U. S. 876, 71 S. Ct. 122; *I.L.F.Y. Co.* v. *Temp. St. Hous. Rent Comm.*, *supra*, 10 N. Y. 2d 263 (1961), 219 N.Y.S. 2d 249, appeal dismissed 369 U. S. 795 (1963), 82 S. Ct. 1155.

The evils which the Legislature sought to correct are so well known that they are even set forth in appellants' Jurisdictional Statement at page 16, footnote 6. Each of the challenged provisions has been repeatedly reviewed and upheld:

### A. "Pseudo" Hotels

All of the Registration Statements, initially filed in 1943 with the Office of Price Administration, meticulously kept up to date with entries of all proceedings, reports, orders, etc., as to status, rent increases, decreases, services; plus all of the files intact, such as applications resulting in final orders, all lease and decontrol reports, and all manner of documentation, were turned over intact to the new State Rent Commission by the then Office of Housing Expediter in 1950—just as they have now all been turned over intact to the City rent agency. Therefore, regardless of whether an establishment *today* states it was a hotel on the admitted base date of March 1, 1950, reference to those extensive federal files clearly reveals what the establishment was under the then federal rent law on that base date.

Even though all orders, classifications and rulings of the federal rent agency, in effect on March 1, 1950, were bind-

ing on the State Rent Commission, as a matter of law, *Proche* v. *McGoldrick*, 307 N. Y. 760 (1954), appellants have persisted in asserting they are being deprived of their constitutional rights where the amendments simply required them to show what they were under the then federal rent law on that admitted base date of March 1, 1950.

The New York courts have repeatedly reviewed and upheld the Administrator's factual determination that a post-base date masquerade as a decontrolled hotel was ineffective to escape rent control. Typical was *Sularn Realty Corp.* v. *Herman*, 25 Misc. 2d 814, 205 N.Y.S. 2d 220, unan. aff'd 15 A. D. 2d 637 (Appellate Division, First Dept., 1962), 223 N.Y.S. 2d 854. It was there held that reference to the Federal status on March 1, 1950 is only a statement of the applicable law which must be applied in any event and was inserted for the prior knowledge of affected parties; that the statutory clarifications here challenged only made the existing test for hotel decontrol more readily understandable; and that the amendments in no manner changed the sec. 14 intent clause of the Act to continue rent control of those accommodations which were subject to rent control under the federal law on March 1, 1950. See also, *Matter of Fabian Studios, Inc. (Herman)*, 25 Misc. 2d 752, 201 N.Y.S. 2d 553, unan. aff'd 13 A. D. 2d 943 (First Dept., 1961), 218 N.Y.S. 2d 591; *Noxon Operating Corp.* v. *Herman*, 32 Misc. 2d 557, 223 N.Y.S. 2d 998, unan. aff'd 16 A. D. 2d 774 (First Dept., 1962), 228 N.Y.S. 2d 462, unan. aff'd 13 N. Y. 2d 604 (1963), 240 N.Y.S. 2d 361; *378 Realty Corp.* v. *New York City Rent & Rehab. Admin.*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817 (1963), 242 N.Y.S. 2d 347, reargument denied 13 N. Y. 2d 902, 243 N.Y.S. 2d 685 (1963).

### B. "Pseudo" Hotels with "Opinion" Letters

The courts have ruled that "pseudo" hotels (i.e., controlled rooming houses masquerading as decontrolled),

which obtained "opinion" letters of decontrol by misstating what they were under the federal law on March 1, 1950, are not deprived of any rights where such an "opinion" letter is revoked, as any such "rights" was improperly acquired by misstatement of material facts and failure to disclose their rent control status on the admitted base date of March 1, 1950.

These "opinion" letters all contained two important caveats: first, they stated they were being issued upon an assumption of the accuracy of facts recited in the applicants' request for a letter opinion; secondly, they stated they were issued pursuant to sec. 117(2) of the Rent Regulations, which stated that an opinion or official interpretation would remain in full force and effect unless and until revoked or modified by the official issuing it or by the Administrator.

Certainly an administrative agency, charged with the protection of the public interest, is not precluded from making a factual determination and revoking a *conditional* opinion upon discovery of misstatement to it of material facts. *225 East 70th Street* v. *Weaver*, 6 N. Y. 2d 197 (1959), 489 N.Y.S. 2d 153; *Rochester Transit Corp.* v. *Public Service Comm.*, 271 App. Div. 406, 66 N.Y.S. 2d 593, leave to appeal denied by the Court of Appeals 296 N. Y. 1061 (1947).

In *Matter of Noxon Operating Corp.* v. *Herman*, *supra*, 32 Misc. 2d 557, 223 N.Y.S. 2d 998, aff'd 16 A. D. 2d 774 (First Dept., 1962), 228 N.Y.S. 2d 462, unan. aff'd 13 N. Y. 2d 604, 240 N.Y.S. 2d 361, it was said (at 32 Misc. 2d 557):

> "* * * Such letter was clearly based on the assumption of the accuracy of the statement of facts contained in petitioner's request for an opinion, and was subject to reversal after respondent undertook an investigation of the material facts. Matter of Fablan Studios, Inc. v. Herman, 25 Misc. 2d 752, aff'd 13 A. D. 2d 943 * * *"

The Court in the *Noxon* case further stated (32 Misc. 2d 557) that "* * * the 1961 amendment was obviously enacted to clarify existing law and made no substantive change in the emergency rent policies of the State. Even if it had, petitioner has presented no novel arguments to overcome the Legislature's rights to exercise its police powers in what it deems an emergency situation." To the same effect, see *378 Realty Corp. v. New York City Rent & Rehab. Admin., supra*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817, 242 N.Y.S. 2d 347, reargument denied 13 N. Y. 2d 902, 243 N.Y.S. 2d 685 (1963).

In other words, the challenged amendments made clear the power of the administrative agency to make a factual determination revoking a masquerade by a "pseudo" hotel, whether or not it was fortified by an "opinion" letter of decontrol, where a careful analysis clearly revealed what the establishment was under the federal rent law on the admitted statutory base date of March 1, 1950.

### C. "Decayed" Hotels

All housing accommodations, and the definition thereof includes hotels, are controlled housing unless specifically exempt or decontrolled.

The statute, which defines those particular hotels which are not controlled, also recites customary hotel services. Moreover, a particular hotel's base date essential services are known from the extensive files and documentation—including Registration Statements, reports, decontrol proceedings, applications, schedules—filed with the then rent agency by their landlords, over the years. Obviously, the data on file is different as to each establishment. The rent statute has consistently empowered the rent agency to exercise its broad discretionary powers to assure the maintenance of essential services furnished on the maximum rent date (Cf. State rent law, ch. 250, L. 1950, Sec. 4, subd.

3(b); ch. 337, L. 1961, Sec. 4, subd. 4 (5)(b); New York City rent law, Admin. Code, Sec. Y51-5.0, subd. b(5)(2)).

The courts have ruled that even without the challenged amendment, the rent agency had the inherent power to exercise control over "purported" hotels that have ceased to provide the customary hotel services which they provided on the base date and have ceased to function as a hotel, i.e., "decayed" hotels. In *Bayview Hotel, Inc.* v. *Herman*, 12 N. Y. 2d 423 (1963), 240 N.Y.S. 2d 585, the highest court of this State upheld the Administrator's factual determination that a shabby rooming house which called itself a decontrolled hotel, was not decontrolled within the meaning of the rent law. The Court of Appeals stated that when the State took over rent control from the federal government in 1950, there were four categories of housing accommodations which were not covered by the State law, three of which (unlike the case at bar) were absolutely free from rent control, regardless of their status or use. The Court went on to describe the fourth category, involved in this challenge to the "decayed" hotel, and stated (Burke, J. at p. 427):

> "We are here concerned with housing accommodations in the fourth category which are allegedly exempt because of their status * * *. However this exemption prevailed only so long as the housing accommodations retained that status entitling them to be exempt. When housing accommodations exempt solely because of their hotel status can no longer qualify for that status, there is nothing in the Rent Control Law which permits a continued exemption (citing)."

The Court of Appeals further stated that the establishment had lost its exemption as a hotel and was subject to rent control when it commenced operations as a rooming house, and amendment of the rent law in 1959 "was not necessary to subject these housing accommodations to rent

control, that came about by operation of law upon the termination of the former exempt status". Also see: *Hotel Armstrong* v. *Temp. St. Hous. Rent Comm.*, 11 A. D. 2d 395 (Appellate Division, First Dept., 1960), 207 N.Y.S. 2d 358; *378 Realty Corp.* v. *New York City Rent & Rehab. Admin.*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817, 242 N.Y.S. 2d 347 (1963), rearg. den. 13 N. Y. 2d 902, 243 N.Y.S. 2d 685.

**D. No Substantial Federal Question**

The challenged provisions of the City rent law have as their background: legislative review, as well as extensive public discussion of the entire rent law, every two years for the past 13 years; legislative concern over the serious social and economic problems of a) the masquerade by controlled housing accommodations as "decontrolled hotels", with or without an "opinion" letter of decontrol, and b) the "decayed" hotel; attempts over an extended period of time to deal effectively with these problems, finally culminating in the 1959 and 1961 amendments to the statute; and their re-enactment without change by the City Council in 1962 because these recent comprehensive amendments made further legislative change unnecessary, and in order that "judicial and administrative precedent" be retained.

The principles by which to test the constitutionality of a statute resting on the police power have been asserted over and over again. A legislative enactment carries with it a strong presumption of constitutionality, i.e., it is presumed to be supported by facts known to the Legislature. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *South Carolina Highway Department* v. *Barnwell*, 303 U. S. 177, 191; *Sproles* v. *Binford*, 286 U. S. 374, 388. The courts may not be concerned with questions as to the reasonableness, wisdom, propriety, or desirability of such a statute; nor may they substitute their judgment for that of the

legislative body so long as there can be discovered "any state of facts either known or which could reasonably be assumed" to afford support for the legislative decision to act. *United States* v. *Carolene Products Co., supra,* 304 U. S. 144, 154; *East New York Savings Bank* v. *Hahn,* 326 U. S. 230, 234; *South Carolina Highway Department* v. *Barnwell Bros., supra,* 303 U. S. 177, 191; *Bordens Farm Products Co.* v. *Ten Eyck,* 297 U. S. 251, 263.

In *East New York Savings Bank* v. *Hahn, supra,* a constitutional challenge against the mortgage moratorium originally enacted in 1933 and extended by the State Legislature in 1943, this Court stated:

> "Appellant asks us to reject the judgment of the joint legislative committee, of the Governor, and of the legislature, that the public welfare, in the circumstances of New York conditions, requires the suspension of mortage foreclosure for another year. On the basis of expert opinion, documentary evidence, and economic arguments of which we are to take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's legislature of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market * * * but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and significance is the legislature and not the judiciary * * *."

The courts have uniformly and consistently held that the judicial function in testing statutory constitutionality is limited to the inquiry of whether there is any rational

basis upon which the Legislature could have made the challenged classification.

The rent control classification as to "hotels" and "rooming houses", carried over from federal rent control, has been held to be valid. *Matter of Hotel Association of New York City* v. *Weaver*, 3 N. Y. 2d 214, 165 N.Y.S. 2d 17 (1957). As was said in *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 594:

> "The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility (Standard Oil Co. v. Marysville, 279 U. S. 582, 584; Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251, 263; South Carolina Highway Department v. Barnwell Bros., 303 U. S. 177, 191-192; United States v. Carolene Products Co., 304 U. S. 144, 153-4). Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to determine whether it is possible to say that the legislative decision is without rational basis."

Finally, we submit that the entire problem is preeminently one for the State Legislature and now the City Council alone to solve. Consideration of the serious problems of these "pseudo" hotels and "decayed" hotels, plus the presumption of constitutionality, afford adequate support for these clarificatory amendments, enacted as an aid to enforcement of the law in the light of experienced abuse. Since appellants cannot possibly establish that the legislative action was without rational basis, the appeal should be dismissed, or the judgment of the Court of Appeals should be affirmed.

## CONCLUSION

**Since appellants present no substantial federal question, this Court should dismiss the appeal or affirm the judgment of the Court of Appeals.**

Respectfully submitted,

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